

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

OMAR EL IZQUIERDO,)
)
Plaintiff,)
)
vs.) Case No. 1:05CV192 CDP
)
LARRY CRAWFORD, et al.,)
)
Defendant.)

MEMORANDUM AND ORDER

This case has been stalled because two defendants, Lawrence Morganfield, III and Chuck Dwyer, remain unserved. Because Morganfield and Dwyer no longer work for the Missouri Department of Corrections, plaintiff has no way of ascertaining their addresses. In recognition of Izquierdo's predicament, I previously ordered the defendants and the Office of the Missouri Attorney General to file under seal the last known addresses of Morganfield and Dwyer, so that service could be effected. They promptly complied with that Order, but the Marshal's service was not able to locate the defendants at the addresses provided. Summons for Morganfield and Dwyer were returned unexecuted.

While I recognize that Izquierdo may not have the means to locate Dwyer and Morganfield, the quest for service of these two remaining defendants cannot continue indefinitely. I have accommodated Izquierdo's circumstances as best I can

by extending the time for service and ordering the defendants and the Office of the Missouri Attorney General to provide addresses for Dwyer and Morganfield. I see no reason to further delay this matter. In the end, Izquierdo, as the plaintiff, is responsible for service of a summons and complaint. Fed. R. Civ. P. 4(c)(1). Because he has been unable to effect service within a reasonable amount of time and has not provided any reason why further delay would be worthwhile, I will dismiss this action as to Dwyer and Morganfield without prejudice pursuant to Fed. R. Civ. P. 4(m). Should Izquierdo obtain current addresses for Dwyer or Morganfield during discovery, Izquierdo may move to add them as parties at that time.

Izquierdo filed a motion for default judgment, arguing that defendants have failed to answer. This is incorrect. The defendants who were properly served – Larry Crawford and Michael Coleman – answered the complaint in a timely manner. I will therefore deny the motion for default.

Finally, I note that defendants did not respond to the motion for a temporary restraining order and injunctive relief and motion to certify class which was filed with the complaint. It may be that these motions were not served on them; I cannot tell from the Court file. In any event, I will order them to respond. I will also separately issue a Case Management Order.

Accordingly,

IT IS HEREBY ORDERED that pursuant to Fed. R. Civ. P. 4(m), this action is dismissed, without prejudice, as to defendants Lawrence Morganfield, III and Chuck Dwyer.

IT IS FURTHER ORDERED plaintiff's motion for default judgment [#23] is denied.

IT IS FURTHER ORDERED that defendants Larry Crawford and Michael Coleman shall respond to plaintiff's motion for a temporary restraining order and injunctive relief and motion to certify a class no later than August 8, 2006.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 25th day of July, 2006.